

Labor Relations for Operations Project Managers

Operations Manager PROSPECT Course
9-13 August 2004

Labor Relations for OPMs

- ◆ Overview
- ◆ Discussion of Pertinent Documents/Terminology
- ◆ Video & Exercise – Managing Under the Labor Relations Law
- ◆ Video & Exercise – Managing Under a Labor Agreement

Key Documents/References

- Law – 5 USC, Chapter 71 Labor Management and Employee Relations
- Existing Bargaining Agreements
- Especially important for new supervisors to review

Management Rights Under Labor Relations Law

◆ Organizational

- Mission, budget, organizational structure, number of employees, technology and work methods, internal security

◆ Assignment of Work

- Work performed, duties by position, time and locations of work, qualifications necessary.

◆ Personnel Mgmt

- Decide upon and take personnel actions

Union Rights Under Labor Relations Law

- Represent employees in establishing personnel policies, practices and working conditions
 - Bargain on procedures for exercise of mgmt rights, such as sick leave policies or break periods.
 - Bargain on specific working conditions, such as parking arrangements or safety equipment.
- Represent employees in bargaining on the Impact and Implementation of Management Decisions
 - Bargain on proposals to reduce adverse impact, such as Reduction in Force.
 - Bargain on proposed procedures for implementation of mgmt decisions such as the addition of new equipment.
- Represent all members of bargaining unit, not just dues-paying members of the union

Mgmt/Union Bargaining Types

- Contract Bargaining
 - Bargaining on Working Conditions (Ex. 4-10s)
 - Impact & Implementation Bargaining
 - ◆ Union requests
 - ◆ Normally involves bargaining over procedures which mgmt officials will use in exercising a mgmt right. Example Drug Testing, Flame Resistant Clothing.
 - ◆ Also involves appropriate arrangements for employees adversely affected. RIF, reduction in number of employees per shift, etc.
- Interest-based Bargaining
 - ◆ Both sides must agree to use it
 - ◆ Can improve both interactions and products

Negotiated Grievance Procedure

A procedure applicable to employees in the bargaining unit for the consideration and orderly resolution of disputes over issues within the scope of the procedure. Grievance procedure details are contained in the negotiated agreement.

Official Time

Duty time spent by employees of an agency acting on behalf of the exclusive representative to perform representational duties for which the employee receives the normal rate of pay from the employer. The amount of official time authorized for such employees to participate in **contract negotiations** is specified in **5 USC 7131**. The amount of official time, if any granted for **representational duties** incidental to contract administration is **subject to negotiation**.

Managing the Law Video

Managing Under the Labor Relations Law Exercise

Dealing with Change Situations

Case 1 The Missing Snack Bar

- Employees at a facility were recently moved to a newly constructed building. Although the new building is clearly better than the old one, it lacked convenient access to a snack bar or coffee shop.
- Before the move, mgmt informed the local union representative in advance, and met several times to work out the impact of the move. During the discussions, neither side mentioned the snack bar. Now a month after the move, the facility union rep has informed the manager that the employees would like to put in a microwave oven, coffee pot, and a food vending machine in a small, currently unused room in the new space.

◆ Is the manager required to bargain with the union on this issue??

- ◆ A. No, because the union was given the opportunity to raise any impact bargaining issues it wanted to discuss and failed to do so.
- ◆ B. Yes, Since this is a bargainable condition of employment that is not currently covered by the contract and has not been clearly rejected in previous negotiations.
- ◆ C. No, because management is not obligated to purchase or arrange for snack, vending, or coffee dispensing equipment for employees.

◆ Is the manager required to bargain with the union on this issue??

- ◆ A. No, because the union was given the opportunity to raise any impact bargaining issues is wanted to discuss and failed to do so. **Wrong**
- ◆ B. Yes, Since this is a bargainable condition of employment that is not currently covered by the contract and has not been clearly rejected in previous negotiations. **Correct, since this is a bargainable condition of employment.**
- ◆ C. No, because management is not obligated to purchase or arrange for snack, vending, or coffee dispensing equipment for employees. **Wrong. Although it is true that mgmt is not under any obligation to purchase or arrange for such equipment, it is under an obligation to bargain about whether it will do so.**

Dealing with Change Situations

◆ Case 2. Temporary Requirements

- ◆ You were recently notified that employees in your section will have to provide staffing at a small outlying facility for the next 90 to 120 days. Conditions at the small facility are considerably more primitive, to say the least. Facility mgmt decided it will be necessary to detail 3 full performance level employees to the outlying facility, and immediately provided notice to the union about the requirement 60 days ago. Now with less than a week before the facility must be in operations, the union has requested impact bargaining on the matter.

Dealing with Change Situations

◆ Case 2. Temporary Requirements

- ◆ Question: Is management required to bargain on the issue, and if so, is it also required to postpone staffing the facility until bargaining is completed??
 - A. Yes, because this will produce a change in working conditions for the employees detailed to the smaller facility as well as those who must cover the main facility and therefore mgmt must bargain the matter to conclusion before making the change.
 - B. No because the Union has forfeited it right to bargain on the matter by waiting to long.
 - C. No because operational requirements dictate that the facility must be open and staffed according to the announced schedule. Furthermore, even if the facility wants to negotiate on the matter, impact bargaining can be wrapped up even after the change has taken place.

Dealing with Change Situations

◆ Case 2. Temporary Requirements

◆ Question: Is management required to bargain on the issue, and if so, is it also required to postpone staffing the facility until bargaining is completed??

- A. Yes, because this will produce a change in working conditions for the employees detailed to the smaller facility as well as those who must cover the main facility and therefore mgmt must bargain the matter to conclusion before making the change. **Wrong. Since mgmt provided reasonable advanced notice, and because operational requirements dictate the facility be open as of the pre-announced date, it would not be necessary to postpone the opening. If the opening date was not critical, then it might be necessary to hold off implementation until fully negotiated. But that is not the case in this instance.**
- B. No because the Union has forfeited its right to bargain on the matter by waiting too long. **This answer may be found correct by FLRA. In situations in which a union has been given reasonable notice but for no good reason waits to the last moment, the FLRA has usually ruled that the union lost its rights to negotiate.**

Dealing with Change Situations

◆ Case 2. Temporary Requirements

◆ Question: Is management required to bargain on the issue, and if so, is it also required to postpone staffing the facility until bargaining is completed??

- C. No because operational requirements dictate that the facility must be open and staffed according to the announced schedule. Furthermore, even if the facility wants to negotiate on the matter, impact bargaining can be wrapped up even after the change has taken place. **In this instance this answer is also correct. In situations in which there is a serious, compelling need to put the change into effect, the FLRA has held that mgmt may go ahead with the change at the pre-announced date — even if negotiations are not completed — and continue working out the impact bargaining issues after the change is completed. Note however that this is appropriate only in situations in which it is truly necessary, for serious operational reasons, to make a change at a certain time.**

Dealing with Change Situations

◆ Case 3. Is this the Party to Whom I am Speaking?

Employees in your work group routinely take breaks at the same time. Recently however, you were called on the carpet when a senior manager attempted to call and the phone rang 25 times without answer. To deal with the problem, you have decided to direct employees to stagger their break periods from now on.

- Question. Are you required to notify the union before informing employees of this policy.
 - ◆ A. Yes, because break periods and arrangements affecting them are personnel policies or working conditions.
 - ◆ B. No, because this involves assignment of work.
 - ◆ C. No, because this is an emergency situation in that a senior manager has demanded immediate improvement.

◆ Question. Are you required to notify the union before informing employees of this policy.

- A. Yes, because break periods and arrangements affecting ~~them~~ are personnel policies or working conditions. **Correct.** Break or rest periods, are considered part of the conditions of employment, and a change in the rules affecting break periods would bring into play the right to bargain.
- B. No, because this involves the assignment of work. **This is not the correct answer. Although the issue does involve assignment of work, the procedures for assigning work such as whether employees must stagger breaks are generally negotiable.**
- C. No, because this is an emergency situation in that a senior manager has demanded immediate improvement. **This is not a correct answer. Although there is certainly a need to correct the situation as quickly as possible, it would not qualify as a genuine emergency under the law. And therefore, the need to make a change would not rule out the legal requirement to inform the union before making the change and bargaining if requested to do so.**

Workshop 1, Dealing with Change Situations **Wrap-Up**

■ Key Questions

- ◆ Will the intended action produce a change of some sort?
 - ◆ If so, will the change effect either personnel policies and practices or working conditions?
 - ◆ Will the intended change and its impact affect bargaining unit employees?
 - ◆ Will the impact be important or significantly affect employee's work lives in some way?
- If the answer to all four questions is yes, the union's right to bargain on the change will come into play.
 - In such cases, you should notify either your personnel/labor relations officials or the union before taking the action.

Managing Under the Labor Relations Law, Workshop II Handling Meeting Situations

Managing Under Labor Relations Law, Workshop II, Handling Meeting Situations

- ◆ Case 1. Feeling Better? A supervisor asks an employee who was absent on sick leave the previous day whether he stayed home the entire day. The employee responds by asking whether he needs the assistance of a union representative.
- ◆ Question; Is this discussion a:
 - **Formal Discussion**
 - **Weingarten Meeting**
 - **Neither**

Managing Under Labor Relations Law, Workshop II, Handling Meeting Situations

- ◆ Case 1. Feeling Better? A supervisor asks an employee who was absent on sick leave the previous day whether he stayed home the entire day. The employee responds by asking whether he needs assistance on a union representative.
- ◆ Question; Is this discussion a:
 - **Formal Discussion**
 - **Weingarten Meeting** **This is correct. All elements for Weingarten are met.**
 - **Neither**

Managing Under Labor Relations Law, Workshop II, Handling Meeting Situations

- ◆ Case 2. Necessary Improvements. Several Employees have come up with ideas for improving the way weekend and holiday scheduling is handled. They have contacted the supervisor about their ideas, and she has agreed to schedule a meeting with them next week to see if the ideas should be put into effect.
- ◆ Question. Is this a:
 - **Formal Discussion**
 - **Weingarten Meeting**
 - **Neither**

Managing Under Labor Relations Law, Workshop II, Handling Meeting Situations

- ◆ Case 2. Necessary Improvements. Several Employees have come up with ideas for improving the way weekend and holiday scheduling is handled. They have contacted the supervisor about their ideas, and she has agreed to schedule a meeting with them next week to see if the ideas should be put into effect.
- ◆ Question. Is this a:
 - **Formal Discussion** **Correct, it meets all criteria for a formal discussion, a mgr is talking with a bargaining unit employee, the topic is a condition of employment, and the meeting is formal in nature.**
 - **Weingarten Meeting**
 - **Neither**

Managing Under Labor Relations Law, Workshop II, Handling Meeting Situations

- ◆ Case 3. Performance Review. Upon being asked to meet with his supervisor, for a periodic performance review, an employee asks to have a facility union representative accompany him to this meeting.
- ◆ Question; Is this discussion a:
 - **Formal Discussion**
 - **Weingarten Meeting**
 - **Neither**

Managing Under Labor Relations Law, Workshop II, Handling Meeting Situations

- ◆ Case 3. Performance Review. Upon being asked to meet with his supervisor, for a periodic performance review, an employee asks to have a facility union representative accompany him to this meeting.
- ◆ Question; Is this discussion a:
 - **Formal Discussion**
 - **Weingarten Meeting**
 - **Neither** **The correct answer is neither. Although the situation seems to be getting a bit tense, the discussion simply involves an assignment of work. The discussion is neither investigatory in nature, nor are the conditions of employment or any active filed grievances under discussion. The mere fact that the employee objects to a job assignment does not give him/her a right to have a union representative present.**

Formal Discussions Key Factors **Wrap-up**

- ◆ Attendance
 - Management Representative
 - Unit employee
- ◆ Topic
 - Conditions of Employment
 - Grievance or Appeal
- ◆ Formality
 - Scheduled in Advance?
 - Agenda known or prepared?
 - Note/minutes taken?
 - Required Attendance?
 - Number of employees/management levels present?
- ◆ Legal Requirements. If a meeting qualifies as a formal discussion, someone in mgmt must:
 - **Notify the Union (don't assume the steward will represent)**
 - **Permit a Union representative to attend**
 - **Allow the representative to actively participate.**

Investigative Meetings Key Factors **Wrap-up**

- ◆ Mgmt representative and unit employee??
- ◆ Investigative/questions asked??
- ◆ Reasonable fear of discipline?
- ◆ Request for representation?
- ◆ If a meeting qualifies as an investigative/Weingarten meeting, the manager conducting the meeting has the following alternatives:
 - End the Meeting
 - Allow a Union Representative to attend
 - Assure the employee of no disciplinary action

Managing Under the Labor Relations Law Workshop III Dealing with Unfair Labor Practices

Managing Under Labor Relations Law, Workshop III, Dealing with Unfair Labor Practices

- ◆ Case 1. Tools of the Trade. Concerned with the large number of tools unaccounted for, the manager of an organization posts an announcement that starting in one week, surprise locker and tool box meetings will occur at random intervals. Employees found with tools that have not been properly checked out, or missing tools that have been checked out, will be subject to discipline.
- ◆ Question; Would management's actions potentially create an unfair labor practice?
 - **No, since they involve internal security practices, in this case the protection and accountability of agency equipment.**
 - **Yes, because the initiation of surprise inspections represents a new personnel policy or practice with potential for considerable impact on unit employees.**

Managing Under Labor Relations Law, Workshop III, Dealing with Unfair Labor Practices

◆ Case 1. Tools of the Trade. Concerned with the large number of tools unaccounted for, the manager of an organization posts an announcement that starting in one week, surprise locker and tool box meetings will occur at random intervals. Employees found with tools that have not been properly checked out, or missing tools that have been checked out, will be subject to discipline.

◆ Question; Would managements actions potentially create an unfair labor practice?

- No, since they involve internal security practices, in this case the protection and accountability of agency equipment. **This is not the correct answer. Although the implementation of surprise searches is an internal security matter—something which does fall within mgmt's rights—nevertheless, the union would have the right to advance notice of the change and an opportunity to bargain on the impact and procedures associated with this new policy.**
- Yes, because the initiation of surprise inspections represents a new personnel policy or practice with potential for considerable impact on unit employees. **This is the correct answer. The intended change will introduce a new personnel policy that will affect bargaining unit employees significantly; for example failure to properly handle tools will become the cause for discipline for the first time.**

Managing Under Labor Relations Law, Workshop III, Dealing with Unfair Labor Practices

◆ Case 2. Words of Wisdom. A new supervisor was recently named in an unfair labor practice charge claiming that she had improperly introduced new work methods into her section. Upset by the charge, she has come to you for advise on how best to avoid ULP charges in the future.

◆ Question. By way of an answer, you advise her to:

- a. Avoid making changes in work methods, technology, or other matters that might affect working conditions until the contract is up for renegotiation.
- b. Communicate only with union officials concerning any intended changes in work methods or technologies and implement only those that are agreed upon.
- c. Advise the union of intended changes before implementing them, and if asked to bargain, see the assistance of labor relations or personnel experts.

Managing Under Labor Relations Law, Workshop III, Dealing with Unfair Labor Practices

◆ Case 2. Words of Wisdom. A new supervisor was recently named in an unfair labor practice charge claiming that she had improperly introduced new work methods into her section. Upset by the charge, she has come to you for advice on how best to avoid ULP charges in the future.

◆ Question. By way of an Answer, you advise her to:

- a. Avoid making changes in work methods, technology, or other matters that might affect working conditions until the contract is up for renegotiation. This is not the correct answer. While it will cut down the chances of a ULP, it does so at the expense of using management's rights to improve the effectiveness and efficiency of the unit.
- b. Communicate only with union officials concerning any intended changes in work methods or technologies and implement only those that are agreed upon. Wrong. The law allows you to communicate with employees concerning such matters, although if a formal meeting is created you are required to give the union a chance to attend. In addition, since management has the right to determine technology and work methods used to accomplish the mission, implementing only those improvements the union agrees to would throw away an important and necessary right of management.
- c. Advise the union of intended changes before implementing them, and if asked to bargain, seek the assistance of labor relations or personnel experts. Correct. The best defense against ULP charges is a knowledge of, and compliance with the requirements of the law. Handling change situations correctly is a long step in the right direction.

Dealing with Unfair Labor Practices Wrap-Up

◆ Common ULP Situations

- Workplace Change Situations
 - ◆ Changes in operating methods or technology
 - ◆ Organizational Structure Changes
 - ◆ New Personnel rules or requirements
- Meetings with Bargaining Unit Employees
 - ◆ Formal discussions
 - ◆ Investigative/Weingarten Meetings
- Statements or Actions Related to Union Activity
 - ◆ Threatened retaliation
 - ◆ Personnel Actions

Avoiding Unfair Labor Practices **Wrap-Up**

- ◆ Most Common Management ULPs
 - **Failure to Bargain**
 - ◆ No notification before a change
 - ◆ Refusal to discuss alternatives
 - **Failure to Allow Union Representation**
 - ◆ Formal discussions without advance notification
 - ◆ Denial of representation at investigative meetings
 - **Discriminatory Actions or Threats**
 - ◆ Personnel Actions based on union activity
 - ◆ Different Treatment based on union activity
 - ◆ Retaliatory actions/threats based on union activity.

Video - Managing Under a Labor Relations Agreement

Managing Under Labor The Labor Relations Agreement

- ◆ Workshop I, Handling Day to Day Decisions Under the Contract
- ◆ Case 1. Vacation Preference. Two employees who work for you have asked to take annual leave for the same week three months from now. Unfortunately, you can only afford to let one of them go because of staffing and workload requirements. One employee, June, has a service comp date of 2/1/72, has worked for the agency since that date, and has been in your section for the past year. The other employee, Sam, has a service comp date of 2/1/68, has been with the agency since 1/1/75, and has been in your section for over seven years. Both employees are in the bargaining unit and therefore both are covered by the labor agreement.
- ◆ Since neither employee is willing to change their request, you look into the contract to see if it provides any help. Under an article entitled annual leave you find: Employees shall be entitled to preference in requests for pre-scheduled leave on the basis of total service with the agency. In the event that more employees request leave for the same period than can be allowed to be absent, leave requests shall be granted in accordance with this provision.
- ◆ Question. Which employee would you grant leave to, why?
 - June, is entitled to her first choice because she has been with the agency almost three years longer than Sam.
 - Sam, because he has the earliest SCD and has been in your section longer than June.

Managing Under Labor The Labor Relations Agreement

- ◆ Workshop I, Handling Day to Day Decisions Under the Contract
- ◆ Case 1. Vacation Preference.
- ◆ Question. Which employee would you grant leave to, why?
 - June, is entitled to her first choice because she has been with the agency almost three years longer than Sam. This is the correct answer. The sample contract provision directly states how to handle this.
 - Sam, because he has the earliest SCD and has been in your section longer than June. Wrong. The labor agreement clearly states how this will be handled. As a general rule if the contract language is clear, it should be applied as written.

Handling Day to Day Decisions Under the Contract

- ◆ Case 2. A Basic Disagreement. Recently, you noticed that one of the employees who works for you has begun arriving at work dressed in worn out jeans, jogging shoes, and T-shirts with various messages printed on them. This style of dress does not appear professional to you, and you would like it to be stopped before it becomes a habit or spreads to other employees in the group. Accordingly, you have read the labor agreement to see what it says. Under Dress Code it says, "Members of the bargaining unit shall groom and attire themselves in a neat, clean manner, which will not erode public confidence in the professionalism of the agency or endanger employees or equipment in any way."
- ◆ Question. What actions, if any are you entitled to take to deal with this situation?
 - None, since the contract does not spell out a clear dress code, and what is neat and professional, is a matter of opinion.
 - You can insist that the employee follow your directions or face possible disciplinary actions for failure to follow directions.

Handling Day to Day Decisions Under the Contract

Case 2. A Basic Disagreement

- ◆ Question. What actions, if any are you entitled to take to deal with this situation?
 - None, since the contract does not spell out a clear dress code, and what is neat and professional, is a matter of opinion. **Wrong. It is true that the contract is not crystal clear, and therefore is open to interpretation. Nevertheless, as a supervisor and representative of management, you are entitled to determine what the contract means and apply it the way you believe is correct. Therefore, if it is your conclusion that torn jeans and T-shirts are not neat and professional, you are entitled to correct the situation.**
 - You can insist that the employee follow your directions or face possible disciplinary actions for failure to follow directions. **Correct. The contract is interpreted and applied by both the union and management. There is one very important additional fact to remember however: When a supervisor makes a determination as to what the contract means and how it will be applied, employees are required to follow instructions first and --- if they believe them incorrect—file a grievance later.** Employees are not entitled, however, simply to disregard supervisory instructions because they think their reading of the contract is more correct.

Handling Day to Day Decisions **Wrap-Up**

- ◆ Are there any contract provisions that apply to the situation?
- ◆ If there is a contract provision, does it provide absolutely clear rule or answer or is it vague?
- ◆ If contract language is not clear, then ask:
 - **Has this situation come up before? If so, how was it handled?**
 - **Is there a clear well established practice in dealing with this situation?**
 - **Have there been any previous grievance or arbitration decisions on this matter? If so, how have they been resolved?**
 - **What seems to be a sensible, fair answer to the problem?**
 - **Does agency management have a particular position on this issue?**

Managing Under the Labor Relations Agreement
Workshop II Dealing with Past Practices

Dealing with Past Practices

- ◆ Case 1. Early Departure Time. Shortly after being assigned to head up a work group, you discover that some employees have been leaving as much as an hour early without your permission. When you confronted one of them with this fact, the employee stated that the previous supervisor had allowed one or two employees to take such early departures if the day's work was finished and the phones were covered. According to the employee, the early shove off is a "past practice". Further investigation confirms that your predecessor knowingly allowed this "practice" for a period of at least several years.
- ◆ Question: Can you end these early departures or not?
 - No because they have clearly been established as a past practice.
 - Yes, because such early departures are not a legitimate past practice.

Dealing with Past Practices

- ◆ Case 1. Early Departure Time.
- ◆ Question: Can you end these early departures or not?
 - **No because they have clearly been established as a past practice. Wrong. Leaving work early, and therefore collecting pay for hours not worked, would be in violation of law, regulation and the provisions of most labor agreements. Therefore, this is not a legitimate past practice.**
 - **Yes, because such early departures are not a legitimate past practice. Correct. Agency management is not only entitled, but required to correct illegal practices upon discovery.**

Workshop II, Dealing with Past Practices

- ◆ Case 2. Dressing Up. According to the labor agreement, “agency management is entitled to determine the appropriate dress and grooming requirements for employees involved in routine contact with members of the public”. Until recently, managers in your area which is heavily involved in public contact did not require that male employees wear neckties. After several comments from visitors, however, you have decided that it would be a good idea to begin requiring them now. When the idea is mentioned at a staff meeting, the local union president states that there is a binding past practice of not requiring ties in this part of the organization.
- ◆ Question: Is management prohibited from requiring that male employees begin wearing neckties by the existence of contrary past practice?
 - No, because the contract clearly gives management the right to make and therefore change dress code and grooming rules.
 - Yes, because mgmt has exercised its right to set dress and grooming requirements through a longstanding practice of not requiring ties.

Workshop II, Dealing with Past Practices

- ◆ Case 2. Dressing Up.
- ◆ Question: Is management prohibited from requiring that male employees begin wearing neckties by the existence of contrary past practice.
 - No, because the contract clearly gives management the right to make and therefore change dress code and grooming rules. **Correct.** In this case, the contract clearly spells out mgmt’s right to determine the dress requirements for employees who deal with the public. That right is not limited to a one-time choice by the wording of the contract, and therefore management retains the right to change the dress requirements. **As a general rule, where either party has a right under the law or the contract, the mere fact that it has chosen to exercise that right in a particular way does not create a binding practice. The right continues to exist as written.**
 - Yes, because mgmt has exercised its right to set dress and grooming requirements through a longstanding practice of not requiring ties. **Wrong.** As noted above, if a contract provisions gives either management or the union the right to choose how to do something in a particular area, the right includes the discretion to choose to do that something differently from time to time.

Workshop II, Dealing with Past Practices **Wrap-Up**

◆ Definition: An unwritten rule based upon a longstanding pattern of conduct.

◆ Key Elements

- **Clear and consistent pattern**
- **Substantial period of time**
- **Mutually known and accepted**
- **Conforms to law, contract, regulation**

◆ Status

- **Binding to the organization**
- **Cannot be changed without prior notice to the Union**

Managing Under Labor The Labor Relations Agreement
Play Workshop III Dealing Effectively With Union
Officials Video

Workshop III, Dealing with Union Officials

- ◆ Case 1. Non Selected. An employee who works in another part of the organization recently applied for promotion to a position in your area. It is your understanding that the employee has routinely used 50% of her time on official time for representational matters. You are concerned at that fact, inasmuch as you would prefer to have employees who are available for duty 100% of the time.
- ◆ Question: Should you discuss this matter with the employee in an effort to determine whether she would be willing to reduce her use of time in order to qualify for the job in your area?
 - Yes, it is only fair to advise the employee of your concern and to give her a chance to alter her work habits to qualify for the job.
 - No, since the employee is using the time legitimately under the contract, and it would be a violation of both the contract and the law to penalize her through non selection for exercising a contractual and legal right.

Workshop III, Dealing with Union Officials

- ◆ Case 1. Non Selected.
- ◆ Question: Should you discuss this matter with the employee in an effort to determine whether she would be willing to reduce her use of time in order to qualify for the job in your area?
 - Yes, it is only fair to advise the employee of your concern and to give her a chance to alter her work habits to qualify for the job. **Wrong. The employee is involved in activity that is clearly permitted under the contract. To require her to cease engaging in such legitimate duties to qualify for a possible promotion would violate both the contract and the law.**
 - No, since the employee is using the time legitimately under the contract, and it would be a violation of both the contract and the law to penalize her through non selection for exercising a contractual and legal right. **Correct. Employees who are serving as union officials cannot be penalized for activities that fall within the boundaries of agreed upon rules.**

Workshop III, Dealing with Union Officials

- ◆ Case 2. Rating performance. One of the employees under your direction has served as a union representative for the last several years. During that period he has routinely used roughly 25% of his time for union related activities. Although a generally satisfactory employee in the past, during the current rating period his performance has slipped. You have noticed that the quantity of his work has decreased, and the number of errors has increased.
- ◆ Question: Can you reduce this employee's performance rating to a level that you feel reflects his diminished output..
 - **No, since the employee is engaged in a protected activity on official time, you cannot reduce his performance rating, since doing so would constitute a penalty against him for carrying out legitimate activities under the contract.**
 - **Yes, The employees involvement in union activities has nothing to do with the declining quantity and quality of his work. He is not insulated against adverse ratings merely because he is a union official.**

Workshop III, Dealing with Union Officials

- ◆ Case 2. Rating performance.
- ◆ Question: Can you reduce this employee's performance rating to a level that you feel reflects his diminished output..
 - **No, since the employee is engaged in a protected activity on official time, you cannot reduce his performance rating, since doing so would constitute a penalty against him for carrying out legitimate activities under the contract. Wrong. It would be improper to reduce the employee's rating because the quantity of his work dropped in proportion to his legitimate use of official time. But that is not the case here. In this situation, the employee's expected and required level of output outside of his union activities has declined in both quality and quantity. Accordingly, his supervisor is entitled— an obligated —to give an accurate appraisal.**
 - **Yes, The employees involvement in union activities has nothing to do with the declining quantity and quality of his work. He is not insulated against adverse ratings merely because he is a union official. Correct. In this case, the employee is not being penalized because of his involvement in union activities, but rather, is being rated on the quantity and quality of his performance. Employees who serve as union representatives are still required to perform up to established performance standards.**

Workshop III, Dealing Effectively with Union Officials **Wrap-Up**

- ◆ Official Time for Representational Activities
- ◆ Key Concepts in Dealing with Union Representatives.
 - **The law permits union representatives to perform a variety of representational activities, such as investigating and presenting grievances.**
 - **When engaged in a protected activity, union representatives are entitled to deal with management on equal footing.**
 - **Representatives may express opinions, arguments and disagreements strongly.**
 - **Reasonable limits on representatives' conduct prohibit grossly disrespectful actions or words, slanderous statements, threats of physical harm or refusal to obey lawful orders.**
 - **Agency Management may not retaliate or threaten to retaliate against a union representative merely for carrying out a protected activity.**

Managing Under the Labor Relations Law Workshop II

- ◆ Communicating with Unit Employees. Managers and supervisors communicate with bargaining unit employees in a wide variety of situations. Undoubtedly, the vast majority of such situations involve routine discussions of work related matters, such as assignments, performance feedback, operational techniques, and the like. Such routine discussions do not bring into play any right of the union to have representatives present. Two special situations, commonly known as formal discussions and investigative or Weingarten meetings do involve the right of union representation, however. These However, these special situations are described below:
 - **Formal Discussion.** A formal meeting between one or more managers and at least one bargaining unit employee to discuss personnel policies, practices and working conditions, or an active grievance or appeal.
 - **Investigative/Weingarten Discussion.** An investigative meeting between a management representative and a unit employee in which the employee reasonably fears discipline and asks for the assistance of a union representative.

Managing Under Labor Relations Agreement

◆ Handling Day to Day Decisions **Wrap-up**

- Definition: Labor Agreement/Contract
 - ◆ Set of negotiated rules that covers all bargaining unit employees
- Contract Administration:
 - ◆ The bilateral (two sided) process of interpreting, applying, and enforcing the terms of the labor agreement.
- Role of Supervisors and Managers
 - ◆ Determine intended meaning of Contract Provisions
 - ◆ Apply contract provisions to workplace situations
 - ◆ Enforce contract provisions fairly and consistently
 - ◆ Recognize and apply past practices
 - ◆ Deal with Union Representatives Effectively

Managing Under Labor The Labor Relations Agreement, Workshop III, Dealing Effectively with Union Officials **Wrap-Up**

- ◆ Official Time for Representational Activities
- ◆ Definition: Official Time. On-the-clock time that may be used for agreed-upon activities in representing employees within the bargaining unit.
- ◆ Key Points to Remember
 - **Union representatives are often allowed on-the-clock time**
 - **Contracts regulate the activities for which official time may be used, the amount of time allowed, and procedures for obtaining it.**
 - **Supervisors and managers are empowered to control the use of official time in accordance with contract provisions.**

Final Recommendations

- ◆ Try to do what you believe is fair and reasonable, don't automatically treat union personnel differently than non-union just because you don't want to have to deal with the union.
- ◆ To deal effectively with bargaining unit personnel, supervisors and managers need to understand the requirements of labor relations law (5 USC Chapter 71) and the terms of the agreement and apply them uniformly.
- ◆ Don't be afraid to exercise your right to assign work, but understand that in exercising this right, I&I bargaining may be involved.
- ◆ Be willing to participate as a member of the I&I management bargaining team.
- ◆ When in doubt, contact HR, OC, or supervisor on an issue.

Questions?